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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,801	04/13/2004	Bryan Withey	18082.11	3066

7590 12/27/2004
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EXAMINER
BOSWELL, CHRISTOPHER J

ART UNIT	PAPER NUMBER
3676	

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,801

Applicant(s)

WITCHEY, BRYAN

Examiner

Christopher Boswell

Art Unit

3676

[Handwritten signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/13/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2 and 5-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,539,757 to Witchey. Although the conflicting claims are not identical, they are not patentably distinct from each other because Witchey '757 discloses a base plate having a plurality of bolt holes (claim 1, lines 4-5), two sleeves oriented normal to the base plate (claim 1, lines 6-7), a storage sleeve oriented parallel to the base plate (claim 1, lines 13-17), a lock mechanism disposed on the base plate adjacent one of the sleeves (claim 1, lines 8-9), and a U-bar having an arch shape portion and two parallel leg portions, where the leg portions are capable of being positioned inside the two sleeves (claim 1, lines 10-12), wherein the locking mechanism is capable of securing the U-bar inside the sleeve (claim 1, lines 23-24). However, Witchey '757 does not recite the legs of the U-bar adapted for receiving a control lever of the skidsteer there between. It would have been obvious to one with ordinary skill in the art at the time the invention was made to utilize the

U-bar to receive the control lever of the skidsteer in order to securely retain the control lever in an inoperable position.

Claims 3-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,539,757 to Witchey (Witchey '757) in view of U.S. Patent Number 6,173,590 to Witchey (Witchey '590).

Witchey recites the invention substantially as claimed. Witchey '757 teaches of a key operated locking mechanism. However, Witchey '757 does not recite the locking mechanism is a combination lock mechanism. Witchey '590 teaches that key operated locks and combination-locking mechanisms are art recognized equivalents (column 2, lines 43-44) in the analogous art of skid steer locking devices for the purpose of placing the locking assembly in a locked condition. It would have been obvious to one with ordinary skill in the art at the time the invention of Witchey '757 was made to utilize either a key locking mechanism or a combination controlled locking mechanism, as taught by Witchey '590 in order to place the locking assembly in either a locking condition or unlocked condition.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to lever locking mechanisms with combination locking devices:

U.S. Patent Number 6,101,854 to Chang, U.S. Patent Number 6,003,350 to Sentner, Jr., U.S. Patent Number 5,950,464 to Tonne, U.S. Patent Number 5,372,019 to Hsiao, U.S. Patent Number 5,295,375 to Jonas.

Application/Control Number: 10/822,801
Art Unit: 3676

Page 4

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Boswell whose telephone number is (703) 305-4067. The examiner can normally be reached on 8:30 - 5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CJB *CB*
December 20, 2004

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600